IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6869 OF 2004

Hemlata Bhagchand Thoke & Others... Petitioners.

Versus

The State of Maharashtra & Ors..... Respondents.

-: ALONG WITH :-

WRIT PETITION NO. 3975 OF 2003

Mangala P. Thorat ..... Petitioner.

Versus

The State of Maharashtra & Ors..... Respondents.

-: ALONG WITH :-

WRIT PETITION NO. 7433 OF 2004

Sanjaykumar R. Khot & Ors..... Petitioners.

Versus

The State of Maharashtra & Ors..... Respondents.

-: ALONG WITH :-

WRIT PETITION NO. 7490 OF 2003

Latabai Manaji Nimase & Ors..... Petitioners.

Versus

The State of Maharashtra & Ors..... Respondents.

-: ALONG WITH :-

WRIT PETITION NO. 8716 OF 2003

Popat N. Shinde and Others..... Petitioners.

Versus

The State of Maharashtra & Ors..... Respondents.

-: ALONG WITH :-

WRIT PETITION NO. 8719 OF 2003

Ravindra Karbhari Buchkul..... Petitioner.

Versus

The State of Maharashtra & Ors..... Respondents.

Mr. Suresh S. Pakale for the Petitioners.

Mr. R.D.Rane, Addl. G.P. for Respondents State.

Mr. R.V. More for Respondent Nos.2 and 4 in W.P. No.6869 of 2004.

Mr. Nitin Deshpande for Respondent (Zilla Parishad in W.P.Nos.3975/2003 & 7433/2004.

Mr. Nitin Jamdar for Respondent Nos.2 & 4 in W.P. No.8716 of 2003.

CORAM : A. P. SHAH and
S. U. KAMDAR, JJ.

DATED : 23RD SEPTEMBER, 2004.

P.C.:

Heard learned Advocates.

2. Clause 12 (C) of the Government Resolution dated 27th February, 2003 laying down the revised Scheme for Shikshan Sevaks, upon translation would read as follows:

> "(C) Apart from the aforesaid action, the Member-Secretary of the Selection Committee as per the letter of requisition, should give an advertisement in one newspaper on the State level and one newspaper on Divisional / District level for the recruitment of 'Shikshan Sevak' of the concerned medium. For Municipal Council and Municipality, action should be taken for giving separate advertisements collectively, for the entire district. In the said advertisements, Districtwise as well as Municipal Councilwise, Total number of vacant posts, cadrewise number of reserved posts should be mentioned. Moreover, it should also be clearly mentioned that any

> candidate from any district of the State, possessing necessary qualification can make application for the same. Alongwith the application, attested copy of D.Ed. Certificate should be sought. It should be made mandatory for the candidate to mention (give) Municipalitywise preference in the application, in respect of the Municipal areas."

3. Clause 12 (C) to which the Petitioners have taken exception in the present petition was inserted in view of the decision of the Aurangabad Bench in Writ Petition No. 817 of 2001 **(Ramdas S/o Arjun Jape and Others v/s The State of Maharashtra)** decided on 11th October, 2002. The Division Bench has relied upon the following observations of the Apex Court in **Excise Superintendent, Malkapatnam V/s K. B. N. Viswashwar Rao and others,** 1996 (6) SCC 216:

> "6. ... ... It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered

in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange, under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority / establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication issued in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this

> procedure is adopted, fair play would be subversed. The equally of opportunity in the matter of employer would be available to all eligible candidates."

4. In the light of the decision in the case of Excise Superintendent (supra), the Division Bench has held that the method of inviting applications under Clause 13 of the Shikshan Sevak Scheme dated 10th March, 2000 from the specified Government offices namely Employment Exchange, District Social Welfare Officer, Commissioner (Tribunal Development), Project Officer (Integrated Tribal Welfare Project) cannot be held to be illegal, arbitrary or unconstitutional but it is desirable that in addition to these modes applications are also invited by publishing proclamation in the local newspapers in future. Consequent upon this direction, the revised scheme has been framed by the State Government vide Government Resolution dated 27th February 2003 and Clause 12(C) of the Scheme was inserted providing for inviting applications by publishing proclamation in the local newspapers.

5. Mr. Pakale, learned Counsel for the Petitioners,

strenuously contended that the Petitioners were enrolled for D.Ed. course before the Shikshan Sevak Scheme was introduced. He submitted that before introducing the Shikshan Sevak Scheme, the procedure and criteria for appointment and selection of Assistant Teacher was different than the procedure introduced under the Shikshan Sevak Scheme. The selection of Assistant Teacher was to be done on the basis of written and/or oral test conducted by the Regional Shikshan Sevak Selection Board. However, the selection of Shikshan Sevak under the new Scheme has to be made on the basis of marks obtained in D.Ed. Examination. As a result, serious prejudice is likely to be caused to the candidates like the Petitioners, who have completed their D.Ed. Course before the Shikshan Sevak Scheme was introduced. Therefore, Mr. Pakale submitted that the Petitioners should be given some weightage of marks or preference in the employment and in any event the applications should not be invited by giving advertisement in the newspapers unless the number of candidates sponsored by various agencies is less than required ratio of 1 : 5. We are unable to accept the submission of Mr. Pakale. The Division Bench of this Court relying upon

a decision of the Supreme Court has issued a specific direction which in our opinion is just and proper and it is not permissible for this Court to take any other view and/or to modify the scheme prepared on the basis of the direction given by the cognate Bench.

6. We see, therefore, no substance in these writ petitions, which are accordingly dismissed.

7. Issuance of certified copy expedited.

Sd/-

(A. P. SHAH, J.)

Sd/-

(S. U. KAMDAR, J.)